

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ECCLESIASTICAL DENZEL WASHINGTON,)
No. 990079,)
)
Plaintiff,)
)
v.) No. 07-4109-CV-C-SOW
)
MATT BLUNT, Governor, et al.,)
)
Defendants.)

ORDER

On November 1, 2007, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions/motion to stay filed by plaintiff on November 16, 2007. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. Exhaustion of administrative remedies is not left to the discretion of the court, but is mandatory. Woodford v. Ngo, ____ U.S. ___, ___, 126 S. Ct. 2378, 2382 (2006). Title 42 U.S.C. § 1997e does not provide for district courts to stay actions while a prisoner exhausts his administrative remedies. Id. at 2382-83. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of November 1, 2007, is adopted. [21] It is further

ORDERED that defendants' motion of September 14, 2007, is granted, in part, and denied, in part, as follows:

- (1) that plaintiff's complaint is dismissed, without prejudice, pursuant to 28 U.S.C. § 1997(e), for failure to exhaust administrative remedies; and
- (2) that defendants' motion to dismiss for failure to state a claim and because defendants are entitled to qualified immunity is denied. [14] It is further

ORDERED that plaintiff's motions to stay are denied. [22, 23]

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: December 17, 2007